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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,167	01/09/2004	Scott R. Watterson	13914.877	7517
22913 7590 04/27/2009 Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111				
EXAMINER				
NGUYEN, TAM M				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
04/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/754,167

**Applicant(s)**

WATTERSON ET AL.

**Examiner**

TAM NGUYEN

**Art Unit**

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-16, 18, 28-34 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16, 18, 28-34 and 37-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-16, 18, 28-34 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (2004/0147372) in view of Saunders et al. (2003/0220766 A1) and in further view of Reyes et al. (7.070.542).

1. As to claims 1-9, 11-16, 18, 28-34 and 37-40 Wang discloses a cushioned treadmill comprising a frame (20), a treadbase (30) having a deck (37) pivotally coupled to one end of the frame, first and second rollers (34,35), an endless belt (36), a deflection sensor (53) assembly for detecting the deflection amount of the treadbase with respect to the frame and a self adjusting cushioning assembly (50) configured to provide cushioning to movement of the deck and adjust the amount of cushioning wherein the self-adjusting cushioning assembly comprises a user input mechanism/selection pad (22), a controller electrically coupled to the sensor and cushioning mechanism, inherently a plurality of coarse weight reading categories, and a plurality/variety of pre-adjustment settings such that the cushioning treadmill adjusts the amount of cushioning provided by the treadmill, inherently within a range of available cushioning from hard to medium to soft, based upon the pre-adjustment settings and the input provided by the user when a user, having a different weight from a previous

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user, steps on the treadbase (see Fig. 1 & Paragraph [0006], lines 7-13). Wang et al. do not disclose that deflection sensor assembly is adapted to ascertain a coarse weight reading for a user based on deflection of the treadbase. Saunders discloses a deflection sensor assembly adapted to ascertain a coarse weight reading for a user based on deflection of a seat bun/user support (see paragraph [0008]. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Wang's deflection sensor assembly with Saunder's deflection sensor assembly, with one end of the sensor connected to the deck and the other end of the sensor connected to the frame, assembly since Saunder's assembly would provide the amount of deflection and a coarse weight reading of the user based on the deflection so that a user can exercise and ascertain his weight when he engages the treadmill. Wang also does not disclose that the cushioning treadmill adjusts the amount of cushioning based upon a coarse weight reading. Reyes discloses a treadmill having a coarse weight measurement system wherein the measured weight is then used to configure various parameters of the treadmill (see Col. 2, lines 63-67, Col. 5, lines 5-9 & Figs. 1, 3A & 6B). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Reyes' teaching of using measured weights to configure various parameters of a treadmill with Wang's self-adjusting cushioning assembly such that a coarse weight is calculated from the deflection of the sensor as taught by Saunders to provide the user with the knowledge of his or her weight while also providing data to the cushioning assembly to adjust the amount of cushioning based on the weight to maintain a pre-selected cushioning effect.

***Response to Arguments***

2. Applicant's arguments with respect to claims 1-9, 11-16, 18, 28-34 and 37-40 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on Monday - Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 23, 2009

/Tam Nguyen/  
Examiner, Art Unit 3764

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764